IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

WP(C).No. 24545 of 2005(V)

PETITIONER:

BABU.P,
AGED 36 YEARS, S/O.PRABHAKARAN,
MULLAVEETIL, NEENDAKARA, KOLLAM.

BY ADV. SRI.K.ABDUL JAWAD

RESPONDENTS:

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1. STATE OF KERALA,
REP. BY SECRETARY TO GOVERNMENT,
FISHERIES DEPARTMENT,
THIRUVANANTHAPURAM.

2. SUPERINTENDING ENGINEER,
HARBOUR ENGINEERING PROJECT CIRCLE,
ASRAMOM, KOLLAM-2.

3. EXECUTIVE ENGINEER,
NEENDAKARA FISHING HARBOUR DIVISION,
HARBOUR ENGINEERING DEPARTMENT,
SAKTHIKULANGARA.P.O.,
KOLLAM.

4. THAHASILDAR,
KARUNAGAPPALLY.

BY G.P. SRI.BASANT BALAJI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF AGREEMENT OF WORK CONTRACT DT.14.6.2000.

P2: TRUEC OPY OF THE MEDICAL CERTIFICATE DT.26.1.2000 ISSUED BY DR.D.PURUSHOTHAMAN TO THE PETITIONER.

P3: TRUE COPY OF THE NOTICE DT.26.6.2002 ISSUED BY R2 TO THE PETITIONER.

P4: TRUE COPY OF REPRESENTATION DT.26.8.2002 SUBMITTED BY THE PETITIONER BEFORE R1.

P5: TRUE COPY OF R.R. NOTICE DT.28.1.2003 ISSUED BY R4 TO THE PETITIONER.

P6: TRUE COPY OF THE JUDGMENT DT.17.2.2003 IN O.P. NO.5489/03-C PASSED BY THIS HON'BLE COURT.

P7: TRUE COPY OF THE R.R. NOTICE ISSUED BY R4.

TRUE COPY

P.A. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.24545 of 2005

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Dated this the 26th day of June, 2007.

JUDGMENT

Heard counsel for the petitioner and Government Pleader. The petitioner is challenging Exts.P3, P5 and P7 proceedings by which an amount of RS.1,82,880/- is sought to be recovered from the petitioner towards compensation for breach of contract with Government. The petitioner was awarded contract for shore protection work at Neendakara port. However, according to the petitioner, work could not be taken up because petitioner sustained major injury which is evidenced by Ext.P2 certificate which is issued by a Doctor. Government Pleader submitted that the certificate produced by the petitioner shows injury sustained after five months of contract. The petitioner's case is that compensation is not determined in any adjudication proceedings and therefore, it cannot be recovered from him. However, the tender conditions provide for cancellation of contract on breach of contract and liquidated damages provided therein is the difference between the two contract amounts i.e. one for which contract is awarded to the petitioner and the other the amount for which contract is awarded to the next contractor after cancellation of the

first contract. I do not think any adjudication is required for determining liability in this case because formula for compensation is provided in the contract itself. The petitioner has no case that the amount demanded is not the difference between the two contract amounts. However, in this case I find there is some merit in petitioner's case because the injury sustained by him and the consequent hospitalisation are proved by Ext.P2 certificate. In the circumstances, I dispose of the W.P. reducing the liability to rupees seventy thousand which is already paid by the petitioner i.e. Rs.20,000/- in the form of forfeiture of security deposit and Rs.50,000/- paid by the petitioner under interim orders of this court. There will be direction to the respondents not to recover any further amount from the petitioner and to treat the forfeiture of security and payment of Rs.50,000/- as compensation for breach of the contract.

C.N.RAMACHANDRAN NAIR
Judge

pms